

LAW OFFICES

# ROSS & HARDIES

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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312-558-1000

TWX NUMBER  
910-221-1154

TELECOPIER  
312-750-8600

529 FIFTH AVENUE  
NEW YORK, NEW YORK 10017-4608  
212-949-7075

580 HOWARD AVENUE  
SOMERSET, NEW JERSEY 08875-6739  
201-563-2700

888 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C. 20006-4103  
202-296-8600

RECORDATION NO. 16628  
NOV 27 1989 4:35 PM  
INTERSTATE COMMERCE COMMISSION

9-331A096

November 21, 1989

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

RECORDATION NO. 16628  
NOV 27 1989 4:35 PM  
INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are one original and four photostatic conformed counterparts of each of the two documents described below.

The first document is a Security Agreement - Mortgage on Goods and Chattels (the "Security Agreement"), dated November 6, 1989, between U.S. Railcar, Inc. ("Debtor") and Deutsche Credit Corporation ("Secured Creditor").

The names and addresses of the parties to the Security Agreement are:

Debtor  
U.S. Railcar, Inc.  
2333 Waukegan Road  
Suite N200  
Deerfield, Illinois 60015

Secured Creditor  
Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, Illinois 60015

A description of the railroad equipment covered by the Security Agreement is set forth in Schedule A attached thereto.

*Lawrence E. Ross*  
*C. Overly*

November 21, 1989  
Ms. Noretta R. McGee  
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A check for \$15.00 payable to the order of the Interstate Commerce Commission is enclosed to cover the required recordation fee of the Security Agreement.

The second document is a Loan Agreement (the "Loan Agreement"), dated November 6, 1989, between the Debtor and the Secured Creditor, and amending the Security Agreement. The Loan Agreement should be filed concurrently with the Security Agreement, the primary document to which it relates.

The names and addresses of the parties to the Loan Agreement are:

Debtor  
U.S. Railcar, Inc.  
2333 Waukegan Road  
Suite N200  
Deerfield, Illinois 60015

Secured Creditor  
Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, Illinois 60015

A description of railcars covered by the Loan Agreement is set forth in Appendix A attached thereto.

A check for \$15.00 payable to the order of the Interstate Commerce Commission is enclosed to cover the required recordation fee of the Loan Agreement.

Kindly return the four photostatic copies of the two enclosed documents in the envelope provided to Kelley W. White, Esq., Ross & Hardies, 150 North Michigan Avenue, Suite 2500, Chicago, Illinois 60601.

Following is a short summary of each of the enclosed documents:

Primary Document. Security Agreement - Mortgage on Goods and Chattels, dated as of November 6, 1989, between U.S. Railcar, Inc., as Debtor and Deutsche Credit Corporation, as Secured Lender, covering ninety-three (93) 100-ton covered coil gondola railcars described on Schedule A attached to the Security Agreement.

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Secondary Document. A Loan Agreement, dated as of November 6, 1989, between U.S. Railcar, Inc. and Deutsche Credit Corporation amending the Security Agreement and covering ninety-three (93) 100-ton covered coil gondola railcars described in Schedule A attached to the Loan Agreement.

Please call me at the above telephone number in Chicago if you have any questions.

Very truly yours,

*Kelley W. White*  
Kelley W. White

KWW:LC  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

11/28/89

OFFICE OF THE SECRETARY

Kelly W. White, Esq.  
Ross & Hardies  
150 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601

Dear Ms White:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/27/89 at 4:35pm, and assigned recordation number(s). 160005-A, 12128-EE, 14696-EEE & 16628 & 16628-A

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

# SECURITY AGREEMENT

## MORTGAGE ON GOODS AND CHATTELS

THIS MORTGAGE made the 6th day of November 19, 89, by and between

U.S. Railcar, Inc. 2333 Waukegan Road, Suite N200, Deerfield, IL 60015

(Customer, hereinafter referred to as "Mortgagor") and (Name and Address)

RECORDATION NO 16628 FILED 148

Deutsche Credit Corporation 2333 Waukegan Road, Deerfield, IL 60015

(Lender & Secured Party, hereinafter referred to as "Mortgagee") (Name and Address)

NOV 27 1989 -4 35 PM

INTERSTATE COMMERCE COMMISSION

WITNESSETH:

1 To secure the payment of an indebtedness of Mortgagor to Mortgagee in the sum of One Million Two Hundred Eighty Nine

Thousand and 00/100

DOLLARS (\$ 1,289,000.00 ),

which is hereby confessed and acknowledged, with interest thereon, all according to a certain promissory note or notes of even date herewith, and also to secure the payment, performance and fulfillment of any and all other obligations of the Mortgagor to Mortgagee, its heirs, successors, legal and personal representatives or assigns, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter arising, due or to become due (hereinafter referred to as "Obligations"), Mortgagor hereby grants, assigns, transfers, pledges, conveys and mortgages to Mortgagee the goods, chattels and property described herein, or on any schedule(s) annexed hereto, as follows

See attached Schedule "A" made a part hereof by reference.

\* including, but not limited to the Loan Agreement attached hereto

initial

all present and future attachments, accessions and additions thereto, substitutions, accessories and equipment therefor and replacements thereof, and any and all proceeds arising out of the sale, lease or other disposition thereof, all such goods, chattels, proceeds and property being, hereinafter called "Mortgaged Property", to have and to hold the same unto Mortgagee forever. Provided, however, that if the Mortgagor shall fully, timely and faithfully pay, perform and fulfill all said Obligations, time being of the essence hereof and of the said Obligations, then this Mortgage shall be void, but otherwise shall remain in full force and effect

\*\* and the Loan Agreement attached hereto

initial

2 Mortgagor agrees with and warrants to Mortgagee that the Mortgaged Property described herein ~~will be delivered to U.S. Railcar by the Pittsburgh and Lake Erie Railroad Company~~ will be delivered to U.S. Railcar by the Pittsburgh and Lake Erie Railroad Company

Initial

~~that all of the Obligations are acknowledged and declared to be secured by this Mortgage and that Mortgagor will fully and faithfully pay, perform and fulfill all of the Obligations, with late charges thereon from and after maturity, whether by acceleration or otherwise, at the highest contract rate provided by law, but not to exceed three (3) percent per month, or as otherwise provided for in the applicable debt instrument~~

3 Mortgagor further agrees with and warrants to Mortgagee that

(a) Mortgagor is the lawful owner of the Mortgaged Property and has the sole right and lawful authority to make this Mortgage, the Mortgaged Property and every part thereof is free and clear of all liens and encumbrances of every kind, nature and description (except any held by Mortgagee), and Mortgagor will warrant and defend the Mortgaged Property against all claims and demands of all persons

(b) Mortgagor will keep the Mortgaged Property free and clear of all attachments, levies, taxes, liens and encumbrances of every kind, nature and description, Mortgagor, at its own cost and expense, will keep the Mortgaged Property in a good state of repair, will not waste or destroy the same or any part thereof and will not be negligent in the care or use thereof, and Mortgagor will not sell, assign, mortgage, lease, pledge or otherwise dispose of the Mortgaged Property without the prior written consent of Mortgagee, and any sale, assignment, mortgage, lease, pledge or other disposition without said consent shall be void ab initio and of no force and effect. Mortgagee is hereby authorized to file one or more financing statements or a reproduction hereof as a financing statement

(c) Mortgagor will insure the Mortgaged Property against loss or damage by fire and extended coverage perils, theft, burglary, and for any and all of the Mortgaged Property which are vehicles, by collision, and also, where requested by Mortgagee, against other risks, for the full insurable value thereof with companies, in amounts and under policies acceptable to Mortgagee, with loss payable to Mortgagee and Mortgagor as their interests may appear and Mortgagor shall, if Mortgagee so requires, deliver to Mortgagee policies or certificates of insurance evidencing such coverage. Each policy shall provide for ten (10) days prior written notice to Mortgagee of the cancellation or material modification thereof. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's Attorney-in-Fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for any loss or damage under any of said insurance policies and to execute any document or statement referred to therein

(d) Mortgagor will not remove the Mortgaged Property from its present location without the prior written consent of Mortgagee and at all times shall allow Mortgagee or its representative free access to and right of inspection of the Mortgaged Property, which shall remain personally and not become part of any realty, and nothing shall prevent Mortgagee from removing same or so much thereof as Mortgagee, in its sole discretion may determine, from any premises to which it may be attached upon breach of this Mortgage. Mortgagor agrees to deliver to Mortgagee appropriate waivers, satisfactory to Mortgagee, of owners, landlords and/or mortgagees of any such premises

(e) Mortgagor shall comply (so far as necessary to protect the Mortgaged Property and the lien of this Mortgage thereon) with all of the terms and conditions of leases covering the premises wherein the Mortgaged Property is located and with any orders, ordinances, laws or statutes of any city, state or other governmental department having jurisdiction with respect to the premises or the conduct of business thereon, and, where requested by Mortgagee, will correct any defaults and/or violation thereof and execute any written instruments and do any other acts necessary to more fully effectuate the purposes and provisions of this instrument

(f) Mortgagor will indemnify and save Mortgagee harmless from all loss, cost, damage, liability or expense including reasonable attorneys' fees that Mortgagee may sustain or incur to obtain or enforce payment, performance or fulfillment of any of the Obligations or in the enforcement or foreclosure of this Mortgage or proceeding either against Mortgagor or against Mortgagee concerning any matter growing out of or connected with this Mortgage and/or any of the Obligations and/or any of the Mortgaged Property

(g) If Mortgagor is a corporation, the execution of this Mortgage has been duly consented to and authorized by all of the stockholders of Mortgagor and duly authorized by its Board of Directors. Mortgagor agrees to deliver to Mortgagee evidence thereof satisfactory to Mortgagee immediately upon request

(h) Mortgagor hereby covenants and agrees to deliver to Mortgagee, as soon as practicable and in any event, within 120 days after the end of each fiscal year, a fully executed financial statement in reasonable detail, and with reasonable promptness such other financial information as may be reasonably requested by the Mortgagee

4 The terms, conditions and provisions contained herein, on the reverse side hereof, and those contained in any agreement(s) or schedule(s) referenced herein or annexed hereto constitute the entire agreement between the Mortgagor and Mortgagee

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by a duly authorized representative on the day and year first above written

\*\*\* except as agreed upon and set forth in the Loan Agreement attached hereto

initial

ATTEST  
Barley H. Crumble  
(Witness or Secretary)

U.S. Railcar, Inc.

(Mortgagor)

James D. [Signature] PRESIDENT  
(Title)

5 This Mortgage ~~may~~ be assigned along with any and all Obligations without notice to Mortgagor and upon such assignment Mortgagor agrees not to assert against any assignee hereof any defense, set-off, recoupment, claim, counterclaim or cross complaint which Mortgagor may have against Mortgagee, whether arising hereunder or otherwise, and such assignee shall be entitled to at least the same rights ~~as Mortgagor~~ ~~as Mortgagee.~~ ~~init.~~

6 If Mortgagor defaults in the performance or fulfillment of any of the terms, conditions, promises, covenants, provisions and warranties on Mortgagor's part to be performed or fulfilled under or pursuant to this Mortgage, Mortgagee may, at its option, without waiving its right to enforce this Mortgage according to its terms, immediately or at any time thereafter, and without notice to or demand upon Mortgagor, perform or fulfill the same, or cause the performance or the fulfillment of the same, for the account and at the sole cost and expense of Mortgagor, and the cost and expense thereof (including reasonable attorneys' fees) shall be a lien on the Mortgaged Property, added to the amount of the Obligation, and shall be payable on demand with interest at the rate specified in Paragraph 2 hereof

7 If Mortgagor defaults in the prompt payment, performance or fulfillment of any of the Obligations, or if Mortgagor shall cease doing business, or shall become insolvent, or make an assignment for the benefit of creditors, or if bankruptcy proceedings for arrangement or reorganization under any Bankruptcy Act or proceedings for the appointment of a receiver, trustee, liquidator or custodian for Mortgagor or any of Mortgagor's property shall be commenced by or against Mortgagor, or if Mortgagor shall fail punctually and faithfully to fulfill, observe or perform any of the terms, conditions, promises, covenants, provisions and warranties contained in this Mortgage or in any present or future agreement or instrument between Mortgagor and Mortgagee, or if any of the warranties, covenants or representations made to Mortgagee be or become untrue or incorrect in any adverse respect, or if there shall be a change in the management, operations, ownership of its stock or control of Mortgagor, ~~or if Mortgagee shall deem the security afforded by this Mortgage unsafe, inadequate or at any risk, then in any such event all Obligations shall at once, at the option of Mortgagee, become immediately due and payable to Mortgagee, and in such event it shall be lawful for Mortgagee to take possession of the Mortgaged Property at any time, wherever it may be, and to enter any of the premises of Mortgagor with or without process of law, and search for, take possession of, remove, or keep and store the same in said premises, without liability for trespass nor charge for storage of the Mortgaged Property, until sold, or may require the Mortgagor to assemble the collateral and make it available to the Mortgagee at a place to be designated by the Mortgagee, and, if not prohibited by law, to sell the Mortgaged Property or any part thereof and all of Mortgagor's equity of redemption therein at public or private sale, without notice or advertisement, such notice or advertisement being expressly waived by Mortgagor, for cash or on credit, and on such terms as Mortgagee may in its sole discretion elect in such county and at such places as Mortgagee may elect and without having the Mortgaged Property at the place of sale, Mortgagee may bid or become the purchaser at any such sale and without being bound to accept the same. The proceeds of any sale shall be applied first to pay all costs, expenses, and charges for pursuing, searching, taking, removing, holding, repairing, advertising and selling the Mortgaged Property including, if not prohibited by law, reasonable attorneys' fees, and then to the payment, partly or entirely, of any of the Obligations as Mortgagee may in its sole discretion elect, returning the surplus, if any, to Mortgagor, who shall remain liable to Mortgagee for any deficiency. Mortgagor agrees to pay any deficiency immediately. Interest on any amount of the unpaid deficiency will accrue at the rate specified in Paragraph 2 hereof. Mortgagor expressly waives any right to notice or hearing in any action to recover possession of any or all of the Mortgaged Property. In any action in the nature of replevin or sequestration Mortgagor agrees that if it contests such action it will post a bond written by a national insurance company authorized to execute such bonds in the state or territory of such proceedings. Such bond to be no less than the value of the subject matter of such replevin or the unpaid balance then owing to Mortgagee, whichever is less. Mortgagor and Mortgagee hereby waive any and all rights to a trial by jury in any action or proceeding based hereon or arising hereunder~~

8 Mortgagee may at any time, with or without exercising any of the rights or remedies as provided herein and without prior notice or demand to Mortgagor, appropriate and apply toward the payment of the Obligations any and all balances, sums, property, credits, deposits, accounts, reserves, collections, drafts, notes or checks coming into Mortgagee's hands and belonging or owing to Mortgagor, and for such purposes, endorse the name of Mortgagor on any such instrument made payable to Mortgagor for deposit, discount or collection. Such application may be made or any monies paid to Mortgagee may be applied, without notice to Mortgagor, partly or entirely to any of the obligations as Mortgagee in its sole discretion may elect. In its sole discretion, Mortgagee may apply and/or change applications of any sums paid and/or to be paid by or for Mortgagor under any circumstances to any Obligations of Mortgagor to Mortgagee, presently existing or otherwise

9 If, after default by Mortgagor in the payment, performance and fulfillment of any of the Obligations or of the entire unpaid amount of the Obligations after the same become or are declared due and payable, Mortgagee fails to demand full payment, performance or fulfillment or otherwise to proceed, such failure shall not be deemed a waiver of the rights of the Mortgagee to make subsequent demands for the immediate payment of the entire unpaid amount of the Obligations, or to take immediate possession of the Mortgaged Property, or to foreclose at any time this Mortgage, or to demand full performance or fulfillment, or otherwise to proceed, and the acceptance by Mortgagee of any payments subsequent to such default shall not be deemed a waiver of any rights of Mortgagee. No delay or failure on the part of Mortgagee in exercising any right, privilege, remedy or option hereunder shall operate as a waiver of such or of any other right, privilege, remedy or option, and no waiver whatever shall be valid unless in writing, signed by Mortgagee and then only to the extent therein set forth. Mortgagee shall have the right to enforce any one or more remedies available to it successively, alternately or concurrently. This Mortgage cannot be changed or terminated orally

10 Some of the Mortgaged Property may be in the hands of Mortgagor under one or more security agreements which are or may be held by Mortgagee and with respect to such Mortgaged Property, this Mortgage is only of any equity that Mortgagor may now or in the future have in such Mortgaged Property and Mortgagee by accepting this Mortgage shall not in any manner be considered as having waived any security interest arising independently of this Mortgage nor shall this Mortgage be construed as adversely affecting any rights of Mortgagee under any other security agreement nor as a waiver of any of the terms and provisions of any other security agreement, guaranty or endorsement, all of which shall remain and continue in full force and effect

11 All of the rights, remedies, options, privileges and elections given to Mortgagee hereunder shall enure to the benefit of Mortgagee, any transferee or holder of this Mortgage, and their respective heirs, successors, legal and personal representatives and assigns, and all the terms, conditions, promises, covenants, provisions and warranties of this Mortgage shall enure to the benefit of and shall bind the heirs, successors, legal and personal representatives and assigns of the respective parties. Any notices relating hereto shall be in writing and delivered in person to an officer, if any, of the party to whom addressed or mailed by certified mail to such party at its address as may hereafter be specified by like notice by either party to the other. Reasonable notification hereunder shall be any notification given or sent at least ten (10) days prior to the event for which such notification is sent

12 Intending that each and every provision of this Mortgage be fully effective and enforceable according to its terms, the parties agree that the validity, enforceability and effectiveness of each provision hereof shall be determined by the law of the state where the Mortgaged Property may be located or the residence or principal place of business of Mortgagor or Mortgagee, whichever renders each such provision effective, however, if any one or more provisions hereof are in conflict with any statute or law and therefore not valid or enforceable, then each such provision shall be deemed null and void but to the extent of such conflict only and without invalidating or affecting the remaining provisions hereof

~~\*\* and the Loan Agreement attached hereto~~

~~initial~~

1. which would adversely affect Mortgagor's ability to pay, perform or fulfill any of the obligations, and if any default as described above is not cured within 10 days after written notice of such default is sent,

~~initial~~

2. with reasonable notice of such public or private sale being provided to Mortgagor,

~~initial~~

# SCHEDULE A

1 OF 1

Schedule annexed to and made a part of a certain Conditional Sales Contract, Chattel Mortgage or Lease dated the 6th day of November, 1989 or Financing Statement, by and between the undersigned

Description of collateral (Quantity, New/Used, Make, Model, General Description, and, if applicable, Engine and/or Serial Numbers)

Ninety Three (93) 100-Ton Covered Coil Gondala Railcars, which may be identified by the following Car Numbers to wit:

## 93 44000 Series Cars

44000	44322	44382
44001	44323	44384
44002	44325	44385
44003	44326	44386
44004	44327	44387
44006	44329	44390
44007	44331	44391
44008	44332	44392
44009	44334	44393
44010	44335	44394
44011	44336	44396
44012	44337	44397
44013	44338	44398
44014	44339	44399
44016	44342	44400
44017	44343	44401
44020	44344	44402
44021	44348	44409
44022	44351	44418
44025	44352	44419
44300	44353	44422
44301	44354	44423
44302	44357	44424
44304	44358	
44306	44359	
44307	44360	
44308	44361	
44310	44365	
44312	44370	
44314	44371	
44316	44373	
44317	44376	
44319	44377	
44320	44380	
44321	44381	

The undersigned Buyer(s), Mortgagor(s) or Lessee(s) hereby verifies the above Schedule as correct and acknowledges receipt of a copy thereof

SELLER/MORTGAGEE/LESSOR

Deutsche Credit Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

BUYER/MORTGAGOR/LESSEE

U.S. Railcar, Inc.

By \_\_\_\_\_

Title \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF LAKE )

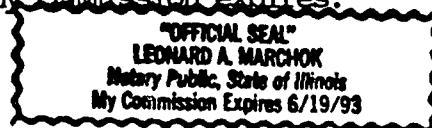
On this 6TH day of NOVEMBER, 1989, before me, the subscriber, LEONARD A. MARCHOK, a Notary Public, duly commissioned, qualified and acting, within and for said Country and State, appeared in person the within named HOMER JONES to me personally known, who stated and acknowledged that he is the PRESIDENT of U.S. Railcar, Inc., an Illinois corporation, and duly authorized by authority of the Board of Directors or By-Laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he has so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 6TH day of NOVEMBER, 1989.

Leonard A. Marchok  
Notary Public

My commission expires:

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF LAKE )



On this 8th day of November, 1989, before me, the subscriber, DAVID K. SMRTNIK, a Notary Public, duly commissioned, qualified and acting, within and for said Country and State, appeared in person the within named Robert Schogen and James Paor to me personally known, who stated and acknowledged that they are the Senior Vice President Secretary and Senior Vice President & Treasurer of Deutsche Credit Corporation, a Delaware corporation, and duly authorized by authority of the Board of Directors or By-Laws of said corporation in their capacity as such officers to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that they have so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 8th day of November, 1989.

David K. Smrtnik  
Notary Public

My commission expires: 5-2-1990

